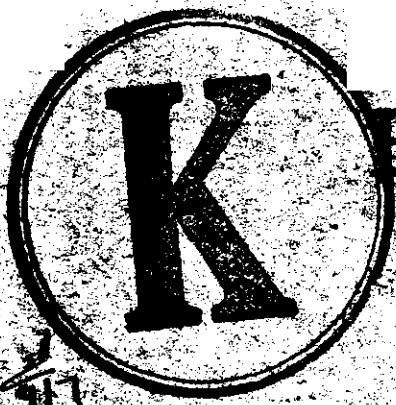


1950.



File No. 0 Inams / 50

Legal Dept

A BRANCH

Subject:— opinions regarding
Inams and Jagirs

E
1-2

File No. 0 Inams / 1950

Gen. 194 e.

348-A

Inam lands:
Shirdhon and
Ichalkaranji
District
Kolhapur:
Resumption of

The facts as can be gathered from the papers forwarded are briefly as follows:-

It appears that in the 19th Century the Jahagirdar of Ichalkaranji granted to his illegitimate son certain lands measuring 9 and 5 bighas at Shirdhon and 3 bighas at Ichalkaranji for maintenance on condition of his rendering service but service was never rendered. In the heirship inquiry of 1861 the Political Superintendent ordered that the holders being related to the Jahagirdar, the lands at Shirdhon measuring 9 bighas and 3 bighas at Ichalkaranji be continued in the name of Tarabai, widow of the deceased holder for her maintenance without any service and that those lands be resumed on her death. The Political Superintendent further directed that the land at Shirdhon measuring 5 bighas should be resumed and continued to the heirs on payment of assessment. (Copy of this order is not among the papers forwarded). Soon after this decision, Tarabai appears to have sold the land at Shirdhon, to the ancestors of the present applicants, Deo Alti and Shankar Sambhu Sheti. Tarabai died in 1899 and while the heirship inquiry was going on, the late Jahagirdar resumed the said land on the authority of the Political Superintendent's order of 1861. The applicants were then dispossessed of the lands which were then sold by the Jahagir by public auction to one Sattappa Nemanna Mangave for Rs. 2925 in 1935. Against this action of the Jahagirdar the applicants approached the Inam Inquiry Committee for restoration of the lands. The Committee inquired into the case and opined that the Jahagirdar's order was not illegal and therefore the applications might be rejected. (Copy of this order is also not in the papers). The applicants then approached the Maharaja of Kolhapur

who after taking the opinion of his Prime Minister passed an order on 11.1.1949 to the effect that this was a case of injustice and the applications may be granted. The Mamlatdar of Hatkanangale who was required to take further action has submitted the papers to the Chief Administrator. The Chief Administrator is of the opinion that His Highness's order was passed on the eve of the merger of the State and as it does not appear to be legal the order may be cancelled and the applications of Messrs. Deoo Alte and Shankar Sambhu Shetti rejected. H.P. has requested that the Chief Secretary and the Remembrancer of Legal Affairs may advise in the matter. C.S. wants to know whether the Maharaja's order should be set aside.

2. The applicants on whose application the Maharaja of Kolhapur has set aside the order of the Jahagirdar of Ichalkaranji do admit the right of resumption of the lands on the death of the widow Tarabai, but their main contention is that this resumption could be only by levy of assessment and not by eviction. Whether a land could be resumed by levy of assessment or by eviction would depend on the nature of the grant, i.e. whether the grant is of revenue only or of soil. Since the decision of the Privy Council in Secretary of State v. Laxmibai (25 Bom. Law Reporter. P. 527) there is no presumption either way and it is to be determined on the facts of each case what is the nature of the grant. This ruling relates to the grants in general. In Amrit v. Hari, 44, B.L.R. 237, it was held that in the case of Watan property the distinction between the grants of the royal share of the revenue and grants of soil which is admissible in the case of inams and saranjams cannot be made without detriment to the statutory restrictions on the Watandars and should not be made unless it is clearly justified by the terms of the

settlement. In the present case there are no papers to determine the terms of the grant. It is undisputed that the grant was made to the illegitimate son of the Jahagirdar for maintenance on the condition of his rendering service. It is, therefore, clear that the grant was burdened with service and, consequently, the ordinary presumption would be that it was a grant of the soil. Considering the object of making the grant to the illegitimate son of the Jahagirdar and the amount of the grant the reasonable presumption would be that it must be a grant of soil and not of revenue as otherwise it would not be a sufficient and proper provision for him. The Prime Minister of Kolhapur on whose advice the Maharaja of Kolhapur has set aside the order of the Jahagirdar of Ichalkaranji appears to have come to the conclusion that it was a grant of revenue only on two grounds,-

- (1) The order of the Political Superintendent passed in 1861 which partly relates to the resumption of 5 Bighas of land at Shirdhon by levy of assessment cannot be differently interpreted in respect of the resumption of other lands i.e. the lands in question on the death of the widow which could presumably be by levy of assessment and not by eviction; and
- (2) The original grant could not be of soil as the lands granted were not out of the Sheri lands of the Jahagirdar.

These two grounds do not appear to be valid. In cases where the question of resumption of lands arises it is always open to the grantor to resume the lands by levy of assessment even though the grant was of soil. It is not possible at this distance of time to ascertain why the 5 Bighas of land at Shirdhon were directed to be resumed by levy of assessment. Different considerations

might have weighed with the authority such as the injustice or inequity to the person in possession if ordered to be evicted. At any rate, the fact that the the 5 Bighas of land at Shirdhon was resumed by levy of assessment would not preclude the right of the Inamdar to resume the other lands by eviction if the original grant was of the soil and if he desires to so evict. As stated above, the original grant appears to be of the soil particularly when it was burdened with service. There is nothing on record to prove that the lands granted in the present case were not out of the sheri lands of the Jahagirdar. It is not only the sheri lands that the Inamdar could grant. There may be some other kind of lands which might have come to the Jahagirdar, say by lapse of account of want of heirs, or default in payment ^{of} revenue. In such cases it is open to an Inamdar to deal with these lands as if he were the full owner. Consequently even assuming that these lands were not out of the sheri-lands that alone would not be sufficient to exclude the possibility of the grant being of the soil.

3. In the Succession Inquiry made in 1861 the Political Superintendent ordered the resumption of these lands on the death of Tarabai. Tarabai died in 1889 without leaving any heir. Consequently, these lands were rightly resumed by the late Jahagirdar in 1913. They were in possession of the Jahagirdar from 1913 to 1935 and in 1939 when the Inam Enquiry Committee was appointed to inquire into the unjust orders of the late Jahagirdar depriving persons of land by way of resumption, the Committee rejected the application of the applicants, holding that the Jahagirdar's order was not illegal. The Inam Enquiry Committee must have taken into account all the circumstances of the case, the nature of the grant, the

incidents attached to such grant, and the rules and regulations governing ^ethe. Prima facie, therefore, the decision of the Inam Enquiry Committee must be accepted as correct. The opinion of the Prime Minister of Kolhapur is not based on valid grounds. There would, therefore, appear no objection to setting aside the order of the Maharaja of Kolhapur and restoring the order of the Inam Enquiry Committee.

Sgd. P.M. Lad
6/2

Remembrancer of Legal Affairs.

U.R. to R.D. No.1730 dated 7th February 1950.

KVV.
19/6
4 cs.

Legal Department.

Abolition of hacs
of Vazifdars of
village Vatwa --
Whether Vazifdars
entitled to
compensation.

The history of the village of Vatwa has been briefly set out in the Collector's letter dated the 24th August 1949 (at page 217 ante). The village appears to have been granted in inam during the pre-British period and before the advent of the British rule was held as a revenue free grant by the ancestors of the present Vazifdars. In 1818-19 when it was under the British rule it was entered as Khalsa and the full rental was received by Government. But it does not appear that the nature of the grant was then definitely determined. In 1863 a settlement was arrived at with the holders by which the management of the village was entrusted to the Vazifdars. The agreement or lease expired in 1889, but was renewed in 1897. The second agreement or lease expired in 1919-20. But the village was continued under the management of the Vazifdars. It appears that the management of the village has now been resumed. The question for consideration is whether the Vazifdars are entitled to any rights in the village on the resumption of the management. In other words, whether any rights survive and whether they can be claimed by the Vazifdars or whether they can claim any compensation for their extinction.

2. The Vazifdars contend that the village is held in inam by them from ancient times and could not, therefore, be resumed by Government (see his application of 13th June 1949). This contention is without any basis. It is now well settled in similar cases from Gujerat itself that whatever rights the holder enjoyed during the pre-British period, those rights would not be

enforceable against the present Government unless they were recognized expressly or impliedly by Legislation or Agreement (I.L.R. 39 Bom. 615.48 Bom. 599). The fact, therefore, that the village was held by the Vazifdars during the pre-British period as a revenue free grant or inam is entirely irrelevant and cannot be relied upon by the Vazifdars. It, however, appears, that on the introduction of the British Rule, the village was entered as 'Khalsa' and the full rental was levied. But in 1863 an agreement was entered into by which the management of the village was entrusted to the Vazifdars. This agreement was renewed in 1898. Any question relating to the recognition of any of the ancient rights of the Vazifdars must be decided with reference to the conditions specified in the two agreements. The tenure of the village appears to have been considered twice. In his report No.1327 dated 1st September 1890, it was observed by the R.L.A. that "the description of the village before 1863 appears to be that it was an inam village in which the quit rent payable to Government was pretty nearly equivalent to the full rental....and that the village was a resumed inam in respect of which the ancient inamdars still retain a few haks." In U.R. to R.D. No.464 dated 25th February 1921, when the question was again considered, no definite opinion was expressed, but the ratio decided^{ndi} was that the Vazifdars were entitled to same rights in the village which would be enforceable.

3. So far as the agreements of 1863 and 1898 are concerned, the material articles are: article 20 in the agreement of 1863 and article 18 in the agreement in 1898. Both these articles provide that

on the resumption or cancellation of the agreements, the Vazifdars were entitled to (1) the profits of the trees, (2) begayat, kuran or wells and (3) three annas in every rupee of assessment. It is no doubt true that the articles refer to the resumption or cancellation of the agreements. But it would appear that the recognition of the above rights after the resumption or cancellation of the agreements suggests that Government hold that the said rights would be continued to be held by the Vazifdars inspite of the termination or expiry of the agreements. If the said rights were actually granted by the terms of the agreements, it could have been arguable that on the termination of the agreements those rights could not survive and would be extinct. But it is clear from the correspondence that the agreements of 1863 and 1898 though not fresh grants, were in the nature of a compromise. Although the right of the Vazifdars to hold the village as either a wholly or partially revenue free grant was not admitted, as observed by R.L.A. in 1891 such rights or haaks of the Vazifdars as the ancient grantees of the village were recognized to a certain extent. If these rights are now to be extinguished, the Vazifdars would be entitled to compensation. The view taken in R.D. notes that as the Vazifdars were allowed to be in management after the expiry of the agreement of 1898, they have been profited to the extent of Rs. two lacs and are not entitled to any compensation is not correct. It is true that the three rights which were recognized as still vesting in the Vazifdars are really rights to be enforced against the cultivators and not against

government. But if the cultivators are to be relieved of the liability from exaction at the hands of the Vazidars, it will be desirable to settle the question of compensation by negotiation or legislation.

Id./- J.R. Dhavandhar 3/4

Additional Secretary to Government,
Legal Department.

U.R.to H.D. No.4595 dated 4th April, 1950.

KVV.
19/6
4 cs.

Office of the R.L.A.

Inam Village
Malegaon Bk.
tal. Kelwan,
District
Nasik;
Right of
Inamdar
to trees
in --

By Government Notification in the Revenue Department No.334-B, dated 14th January 1887, an area admeasuring about 2915 acres and 14 gunthas in the village of Malegaon Budruk has been declared as reserved forest under section 19 of the Indian Forest Act, 1878. It is true that the Sanad issued in July 1904 mentions the grant of the ~~whole~~ village of Malegaon to the Inamdar; but the extract from the Land Alienation Register of Kelwan taluka (which also refers to the grant of the entire village) shows that the area of the village granted in Inam is only 1037 acres and 10 gunthas. The area was constituted into a reserved forest in 1887 i.e. much earlier than the grant of the ~~village~~ by the sanad of 1904 and that clearly implies that the said forest area was the property of the Government since otherwise it could not have been constituted into a reserved forest. Besides the Sanad provides for the grant of 1037 acres and 10 gunthas which could not obviously include the reserved forest area which measures about 3000 acres. It is therefore apparent that the grant did not include the reserved forest area which vested in Government and the grantee can have no claim to it. Besides the grantee's claim is time-barred since for more than 60 years he has been excluded from the enjoyment of the forest.

2. Neither the Inamdar nor the contractor can therefore lay any claim to the trees in the reserved forest area; and if Shri Patil has commenced cutting trees in that area the action of the Forest Department Officers would appear to be justifiable. There is no force also in the petitioner placing reliance upon Government letter, Revenue Department No.7352/45/28803-M, dated 14th May 1948, since what Government apparently intended to convey in that letter was that they recognised the right of the Inamdar to the trees

growing on the lands granted in Inem.

Id./ P.M. Led
3/7

Remembrancer of Legal Affairs.

U.R. to R.D., No. 9163, dated the 3rd July 1950.

KVV:
19/6
4 cs.

R.I. No.6395 dated 14-4-1950.

3. The applicant Krishnaji Ramchandra Deshpande is the adopted son of Ramchandra Sidheswar who was the holder of certain pargana watan Inam lands of class V and Deshpande Cash Allowance of Rs.10/-. As he failed to prove that he belonged to the watan family of Ramchandra Sidheswar his claim to the watan land was rejected and the Commissioner in 1933 directed that the name of Gengubai the widow of Ramchandra Sidheswar should be entered. After Gengubai's death the name of one Shankar Raghunath was entered. However in view of G.R.R.D. No.2658/28, dated 4-10-1938 wherein Govt. directed that in all cases of pargana watans settled under the Gordon Settlement the adoption of non-watanders, which are made without the permission of Government and without the consent of other sharers in the watan, if otherwise valid, should be recognised as long as there is in existence a lineal male heir of the original grantee of the watan, on 13-12-1941 Govt. directed that the name of Krishnaji Ramchandra Deshpande be entered as holder. The recognition of Krishnaji was subject to the condition of existence of male heir and also subject to the condition that he withdraws the appeal against Govt. (See also R.L.A's opinion No.9172 dated 24-10-1941).

The appeal was accordingly withdrawn and his name has been entered to the cash allowance with effect from 13-2-1943 and the claim of Shanker Raghunath was rejected. Being aggrieved by this Shanker Raghunath filed a Civil Suit.

This suit as well as the appeal filed by him in the District Court was dismissed. It is stated that in view of this litigation, the name of Krishnaji Ramchandra was not entered in the watan Inam lands. The applicant has requested the Collector that his name may now be entered. Raghunath Shankar, the son of Sankar Raghunath has also requested the Collector that till the appeal filed by him in the High Court is disposed of no action may be taken in this matter.

Since the Collector has not received any notice of appeal he has proposed that the name of Krishnaji be entered as holder of the watan Inam land. The R.D. is inclined to agree with the Collector. R.L.A. is requested to advise before issue of the order.

Go. P.M. Lad
20/6

U.R. to R.D. No.8527 dated 21-6-1950.

KVV.
19/6
4 es.

3577
1-3-60

Submitted with reference to A. & F.D. office note at p.21 ante. Shri Ramchandra Vinayak Deo, Inamdar of Pirangut, district Poona had applied to the Divisional Forest Officer, Poona, for permission to cut the after-growth of teak in S.Nos.169 to 172 of that village. The village formerly formed part of the Bhur State which has since merged in the Bombay State. As the permission asked for was refused, the Inamdar has approached the Chief Conservator of Forests contending that the village being an Inam village granted to the Deo family, and the grant being of the soil, he has a proprietary right over the teak trees in the forest. The A. & F.D. which has also consulted the Spl. Officer. P.& S.D., Shri Tukol, has raised for R.L.A.'s consideration the question whether the Inamdar's right to the teak trees should be recognised.

Sgd. P.M. Lad.
18/7

U.R. to A. & F.D. No.10263 dt. 20-7-60.

Office of the R.L.A.

Liability of
Dumaldars to
compensate for
Devasthan lands
alienated.

Under the Kolhapur Huzur Order of 1885, the liability to compensate for the remaining 22 acres of the Devasthan land was imposed on the Dumaldars and this liability was joint and several. This Huzur Order of 1885 remained unexecuted as some of the Pot-Dumaldars, who were aggrieved by that order, had appealed to His Highness the Maharaja of Kolhapur. The appeal was finally dismissed in 1916 under Mulki Tharav No. 67 dated 16th June 1916 and the previous order of 1885 was confirmed. Notwithstanding the rejection of the appeal of the Dumaldars, the original order of 1885 still remained unexecuted until 1932, when it was decided that the deficit of 22 acres should be made by taking over the Dumaldar's land of an equal area and that only one-sixth portion of each Pot Dumaldar's landed property is to be taken over and the remaining to be recouped from the representative Dumaldar. This order was in some respects inconsistent with the previous order of 1885 inasmuch as the liability of each Dumaldar other than the representative Dumaldar was limited to one-sixth portion of his property. This order has to be construed with the previous order of 1885 and reconciled. This is apparent also from the subsequent order passed by the Prime Minister in 1933 and confirmed by His Highness to the effect that, if the Dumaldar is aggrieved by this arrangement, and if his complaint be found to be true, other sherrers should be required to compensate him. In the course of the execution of this order it was found that the representative Dumaldar had disposed of his landed property with the result that he could not be called upon to recoup. The matter went up to the Council which ultimately decided to refer the present applicant Dumaldar to seek redress in the civil court if he found himself unable to recoup for the loss from the representative Dumaldar. Even against that order the Dumaldar made appeals and applications and ultimately the Chief Administrator, Kolhapur, decided to decline to reopen the case. The liability of the Dumaldars, including

the representative Dumaldar, was to make up the loss caused to the Devasthan and, as stated above, that liability was joint and several. If the present applicant Dumaldar has enough land to make up the loss, he will have to yield possession of his land to that extent and, if he has any grievance, it would be open to him to proceed against the representative Dumaldar and, if he be found to be landless, to proceed against the other Dumaldars to share the loss proportionately. At any rate, it is a matter between him and the other Dumaldars with which Government has nothing to do. In the circumstances, it does not appear proper to reopen the matter which has been decided long back and has been re-affirmed subsequently in a number of orders passed by the Council and the Maharaja.

Sgd. P.M. Led
26/7

Rememberer of Legal Affairs.

U.R. to R.D. No.10639 dated the 27th July 1950.

KVV.
19/6
4 ss.

Office of the R.L.A.

Change of
entry in
Record of
Rights of
Government
Kharaba land
in favour of
Vajifdar
Inams.

The management of the village Vatwa was entrusted to the Vajifdar in accordance with the terms of agreements entered with by the Chief Vajifdar in 1863 and renewed in 1892. The latter agreement or lease expired in 1919 but no action was taken to resume the village. On the orders of Government the village has now been resumed by the Collector. In his opinion No.4595, dated 4th April 1950, the Additional Secretary, Legal Department has expressed the view that the Vajifdar's claim that he is an inamdar of the village is quite untenable and that after expiry of the lease in 1919 he is entitled to three haks viz. (1) profits of trees (2) bagayat, Kuran or walls and (3) three annas in every rupee of assessment. The unoccupied lands thus do not vest in the Vajifdar as the village is not inam but leasehold. Consequently the Mamlatdar's order directing entry of the S. No.913 as vesting in the Vajifdar was improper and has been correctly set aside by the Prant Officer under section 211 of the Code. The view taken in R.D. note dated 1st June 1950 is correct.

Id./ P.M. Lad
22/7

Remembrancer of Legal Affairs.

U.R. to R.D., No. 10406, dated the 24th July 1950;

KVV.
19/8
4 cc.

Office of the R.L.A.

Issue in
Kolhapur.

Civil Suit No.279 of 1945 was filed in the Civil Court, Gadchinglej for a declaration that the order of 1929 passed by the Maharaja was illegal and for possession of the suit land and it was decreed. In appeal No.353 of 1948 the District Judge, Kolhapur confirmed that decree. In view of these decisions the order of 1929 passed by the Maharaja has ceased to be operative, unless the decision of the District Judge is appealed against. Consequently it would not be necessary for Government to set aside the order of 1929 passed by the Maharaja when it has ceased to be operative.

Sgd. P.M. Lad.

22/8

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No.11971 dated the 22nd August 1950.

KVV.
19/8
4 am.

Office of the R.L.A.

Restoration
of Agriculture
Inam land -
Kopshi Jehagir
in Kolhapur
State.

The Prime Minister had no power to revise the order of His Highness the Maharaja of Kolhapur. Consequently, the Prime Minister's order dated 23rd October 1948 will have to be ignored. The Huzur Order of 1899 subsequently ratified in 1937 and reaffirmed in 1948 will have to be executed. It may be that during this period certain rights of third parties have been created but it would be for these parties to seek proper remedies in a Court of Law when they are threatened with eviction. Government should not, therefore, refuse to execute the Huzur Order and drive Shri Ganpati G. Patil to a Court of Law since such procedure would in effect amount to nullifying the Huzur Order and refusing any relief to Shri Patil, as his remedy by any other process would by this time be clearly time barred. The proposals made by the Commissioner, S.D. may, therefore, be followed.

Sgd. P.M. Lad
8/8

Remembrancer of Legal Affairs.

U.R. to R.D. No.11310, dated the 9th August 1950.

KVV.
19/6
4 cs.

Legal Department.

R.I. No. 11770 dt. 10-7-50.

Submitted.

The facts of the case are stated in the letter of the Collector of Kolhapur at pp. 17-19 ante. Briefly they are as follows: Dhondubai wife of Govinda Power held Gaon Senadi Inam land measuring 10 acres 4 gunthas assessed at Rs.24/- in Himmat Bahadur Jehagir. She was granted permission to adopt by the late Jehagirdar on 21-10-1935. Against this Appa Babaji Power appealed to His Highness on the ground that the inam was Kadim one and the Darbar was the proper authority to grant such permission. The Sarsubha who was asked to enquire ~~re~~ reported that the inam was a Kadim and that it is for the Darbar to grant such permission. This report was accepted by His Highness in 1938. In 1944 the then Prime Minister, however, gave ex-post facto sanction to the adoption to Dhondubai. But when she applied for entry of her adopted son's name to the inam the Revenue Minister found that she had a son who was married and died leaving behind a widow who re-married after him and therefore Dhondubai had no right to adopt any son and that the ex-post facto sanction given should be withdrawn. The Executive Council of the Kolhapur State under G.R.P.D. No.28 dated 7-8-1947 resolved to cancel the ex-post facto sanction given by the ex-Prime Minister and the parties were informed accordingly. Being dissatisfied with this decision Dhondubai applied on 10-3-1948 to His Highness but the application remained pending and after merger it was rejected by the Collector of Kolhapur. She has now approached Govt. for redress. The Collector who was asked to give his remarks is not in favour of reopening the matter. R.D. has requested R.L.A. to advise whether the position stated at 'A' of the Collector's letter that under the Hindu Law as it existed at Kolhapur, Dhondubai was not entitled to adopt

after her late son's marriage leaving behind him his wife, is correct.

The legal position stated by the Collector of Kolhapur at 'A' of his letter dated 8-6-1950 is correct.

Id./ P.M. Led.
30/8

U.R. to R.D. No.12543 dated 1-9-50.

KVV.
19/6
4 cs.

Office of the R.L.A.

Restoration of
alienated Devasthan
inam land on which
full assessment
is levied.

The lands being settled under the Summary Settlement by virtue of the provisions of Act VII of 1863, they would continue to be the property of the Devasthan subject to the payment of the fixed annual assessment settled under section 6 thereof, and, even though the lands have been alienated long ago it appears that the alienation is not lawful inasmuch as it purports to divert the use of the land for an unlawful purpose. In view of the fact that the alienation is not lawful the lands would not cease to be the Devasthan Inam lands. Consequently, the removal of these lands from the inam category as proposed by the Collector would not be lawful. It is for the Managers of the temple to seek relief in a Court of law if they desire that the property should revert to the temple (See the observations of Shah J. in Shankarlal Vs. Secretary of State, 21. Bom. L.R. 668 at p. 687). The alienation being prima facie unlawful Government had no right to levy full assessment on these lands (See Shankarlal Vs. Secretary of State, 21. Bom. L.R. 668). However, so long as the lands continue with the alienees the practice of levying full assessment which has been in force for 54 years may be continued.

Sgd. P.M. Lad.

5/10

Remembrancer of Legal Affairs.

U.R. to R.D. No. 14046, dated the 6th October 1950.

KVV.
19/6
4 cc.

Office of the R.L.A.

Inam land, Mouje
Kanzari, Taluka
Nadiad, Dist.Kaira
- whether it is
a personal inam.

It is presumed that the Sanad referred to in paragraph 4 of Revenue Department office note means the gift deed at p.55 ante. If so, it appears that, that gift deed purports to grant the village to Shri Tambvekar for the services of the Deity at Dakor and consequently it is a religious gift and Shri Tambvekar was to manage the property merely as a Vahiwatdar on condition that he should use the income for the services of the Deity (see observations of Sergeant C.J. in Chintamen Bajaji Dev v. Dhondi Ganesh Dev I.L.R. 15 Bom. 612 at p.622). The view taken by Revenue Department that it was a personal grant made to Shri Tambvekar is not correct. This is also confirmed by the view taken by the Court when it framed a scheme for the administration of the Inam property as a charitable grant. However, it appears from the extract from the land alienation register that the inam was adjudged on 8-7-1868 under the summary settlement as a personal grant and a Sanad was issued accordingly. That Sanad is not among the papers. Consequently, it would not be possible to say whether this Inam should be treated purely as a personal Inam or as a Devastha Inam.

Sgd. P.M. Lad
6/10

Remembrancer of Legal Affairs.

U.R. to R.D. No.14111, dated the 7th October, 1950.

Office of the R.L.A.

Personal Inam -
whether collector
can hold enquiry
under section 37
of the Code in
respect of Gaothan
of the Inam
village.

It appears from the Assistant Inam Commissioner's order at pages 87B to 87-I of the file that the village Yerawada, Taluka Haveli, District Poona was adjudged under Act XI of 1852 Schedule B Rule 2 and from the Sanad which was issued in 1893 it is apparent that the village was ordered to be continued as Personal Inam to the grantee under section 4 and section 16 clause (b) of Act II of 1863. It is undisputed that the village is a Sharakati Inam village the revenue of which is shared by the Inamdar and Government in certain proportion. The fact that it is a Sharakati Inam village would not exclude the possibility of the grant being one of soil. From the Sanad it appears that the village of Yerawada has been continued as a hereditary Inam. The Sanad being issued under section 4 of Act II of 1863 it would not be possible to infer from it as to whether the grant is one of soil or of revenue only, for the object of settlement under Act II of 1863 only relates to the exemption from payment of land revenue. For the purpose of ascertaining the true nature of the grant, that is to say, whether it is one of soil or of land revenue only, it would be necessary to consider the previous history of the grant. From the copy of the Sanad at page 87 B produced by the applicant it appears that the village Yerawada, excluding the rights of Kedia-pre-alienated-Hakdars was granted to Jadhavgir Gosawi with rights in water, wood, treasure etc. "JALA" "THRU" "TRUNA" "KASHTHA" "PASHAN" "NIDHI NIKH" which expressions conclusively prove that the grant was one of soil. In Vinayakrao v. Secretary of State for India in Council, 23 Bom.39 it was held that open places in a village site not being the property of individuals, belong to the Inamdars. The enquiry proposed under section

37 of the Bombay Land Revenue Code in the present case relates to a Gaon land in the village of Yerwade. Consequently, it appears that the enquiry under section 37 of the Land Revenue Code cannot be held in respect of such land when the Inamdar appears to have a vested right to the soil. This right of the Inamdar would not exclude Government's claim to a share in the revenue of the land whenever it yields any revenue. The view taken by the Commissioner, Central Division is correct.

Egd. P.W. Lad.
12/10

Remembrancer of Legal Affairs.

U.R. to R.D. No. 14429, dated the 14th October 1950.

KVV.
19/6
4 cs.

R.I. No. 16300 dt/1-9-50.

Submitted with reference to R.D. note at p.95.

Shri Bandhu Naik, Inamdar of Chamer Digar taluka Kalwan, Nasik District, has requested for permission to cut and remove teak trees from the forest areas of the village. The tenure of the inams was not decided under the Watan Act but it is a sherkati village. The revenues of the village are recovered by the village officers and shared between the Govt. and the Inamdar in the ratio of 70:30. Sanad issued in 1904 is at p. 11 of the case papers and the extract from the Alienation Register is at p. 31 ante. Under the Sanad, ~~which~~ what was granted was the whole village. It is no-where stated in the sanad that the grant was of revenue only. It only reserves the right of Govt. to mines and minerals and therefore by implication the right to trees appears to have been granted to the inamdar. (see R.L.A's opinion No. 4634 D/ 13-8-48) In this case the judi and other taxes payable to Govt. vary according to the net revenue of the village. (see remarks Col. read with entry in Col. 16 of the extract from the land Alienation Register). Thus this case appears to be on all fours with that in R.L.A's opinion No. 516 dated 12-1-1950. There appears therefore no objection to Govt. recognising the inamdar's right over after-growth of teak in the forest areas of the village. But instead of allowing him to cut his share of the after-growth of teak wood forest it would be desirable that the same is disposed of and shared in the proportion stated above. The view taken by R.D. in para 3 of the note is correct.

Sgd. P.M. Lad.

13/10

Remembrancer of Legal Affairs.

U.R. to R.D. No.14501 dated 16-10-50.

KVV.
19/6
& co.

Office of the R.L.A.

Levy of Shinghoti tax
by Inamdar.

As the Inamdar is claiming an immemorial right to levy the Shinghoti tax which right appears to have been supported by the documentary evidence, it appears safer to issue an order under the Bombay Haqqa Prohibition Act, 1839 (which Act has been extended to the merged area) prohibiting the levy of Shinghoti tax.

Sgd. P.M. Led. 31/10.

Remembrancer of Legal Affairs.

U.R. to P.S. & D. No. 15234 dated 1st Nov. 1950.

KVV.
19/6
4 cc.

Office of the R.L.A.

Question of rights
of Jagirdar under
award against
Likhi Talukdar.

Shri Tukol in his note at pages 33-35 ante has come to the conclusion that the award between the Likhi Talukdar and Bhadreser Jagirdar is not binding and is unenforceable inasmuch as it was never filed in court nor was a decree obtained thereon. This view of Shri Tukol appears to have gone on a wrong basis. He appears to have treated it as an ordinary award between two private parties, which is not a fact.

2. The award which was passed in the arbitration case arose out of a dispute between the Likhi Talukdar and Bhadreser Jagirdar in respect of certain rights over the village of Delpur which was granted to the Bhadreser Jagirdar under a deed of 1870. Such disputes, it appears, were treated as disputes of a political nature in respect of which political suits could be filed. It is not known whether any Act similar to the Indian Arbitration Act was in force in the State. Even assuming that such Act was in force, that Act would not be applicable to such political suits or awards. Consequently, it appears that the award did not require to be filed in a civil court nor was it necessary to obtain any decree on such award. At any rate, it is clear that the award was passed long ago and was acted upon for two years, i.e. 1941 and 1942. The Jagirdar appears to contend that the award is not binding upon him since the compromise was effected by his pleader without any proper authority from him. This contention, it is for the Jagirdar to substantiate. There would appear, therefore, no legal objection to proceed on the assumption that the award has been validly passed, particularly when it has been already acted upon for two years.

3. It may be noted that this grant was made some time in 1870. It means, therefore, that it was the jadid grant which could be revoked by the Likhī Talukdar after the death of the original grantor. Consequently, the Jagirdar should be thankful for the non-revocation of the grant (see pages 294-95 of Lee Warner's "Native States of India").

Sgd. P.M. Lad.
22/11

Remembrancer of Legal Affairs.

U.R. to R.D. No.16465, dated the 23rd November 1950.

KVV.
19/6
4 cs.

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